IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1584 of 1993

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT Sd/=

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

1 to 5 :: NO

==========

SHARDABEN PARVATSINH DHUM - Petitioner(s)

Versus

JASHWANTIBEN,WIDOW OF THAKORDAS JAMNADAS - Respondent(s)

==========

Appearance :

MRS KETTY A MEHTA for Petitioner

NOTICE SERVED for Respondent

==========

CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 21/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 14th October, 1993 passed by the learned *Extra* Assistant Judge, Surat in Regular Civil Appeal No. 99 of 1991, the respondents-defendants in Small Cause Suit No. 32 of 1980, have preferred the present Revision

Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondent-plaintiff is the owner of the suit premises situated at Surat. The suit premises was leased to the defendant no.1 for a monthly rent of Rs. 45/=. The plaintiff instituted Small Cause Suit No. 32 of 1980 in the Court of Small Causes at Surat for recovery of possession of the suit premises on the grounds that the defendant no.1 had unlawfully sublet or assigned the suit premises; that the suit premises was not being used by the defendant no.1 had for the purpose for which it was let; and that the defendant no.1 had acquired suitable alternative accommodation. The suit was contested by the defendant no.1 vide written statement Exh.17. It was denied that the suit premises was sublet or assigned or was not used, as alleged. As to the alternative accommodation, it was stated that the defendant no.1 had acquired a residential flat in Vighneshwar Society at Surat but that was not sufficient to accommodate his entire family. It was stated that the defendant no.1 had a married son and that the married son had occupied the flat at Vighneshwar Society. The defendant no.1, his wife and other children and his mother continued to occupy the suit premises. The suit was tried by the learned Additional

Judge, Small Causes Court. The learned trial Judge, by the judgment and order dated 28th February, 1991, recorded finding against the plaintiff, dismissed the suit and passed decree in favour of the defendant no.1.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 99 of 1991 in the Court of learned District Judge, Surat. The Appeal was heard by the learned Extra Assistant Judge, Surat. Pending the Appeal, the defendant no.1 acquired another premises at Prabhunagar, Surat. The defendant no.1 also passed away. This further development was pointed out to the Court. The plaintiff alleged that with the passing away of the defendant no.1, the requirement of the family of the defendant no.1 had reduced to an extent and acquisition of accommodation at Prabhunagar Society shall meet the requirement of the family of the defendant no.1. The respondents, heirs and legal representatives of the defendant no.1, maintained that the accommodation at Prabhunagar Society was not complete and was inhabitable. The accommodation at Vighneshwar Society was enough for one married couple alone and could not support the widow of the deceased and the other son who too was of marriageable age.

In view of the aforesaid further development, the learned Judge by impugned judgment and order dated 14th

October, 1993 remanded the matter to the trial Court for limited purpose to allow the parties to lead evidence with respect to acquisition of accommodation at Prabhunagar society and whether such accommodation was suitable for the family of the defendant no.1. Rest of the findings recorded by the trial court were confirmed. Feeling aggrieved, the respondents have preferred the present Revision Application.

Mrs. Mehta has submitted that the approach of the lower appellate court in remanding the matter for limited purpose is erroneous. She has submitted that the acquisition of accommodation at Prabhunagar society shall give fresh cause of action to the plaintiff which requires filing of suit afresh. She has submitted that the said acquisition cannot be said to be a further development pending Appeal which called for an order of remand. She has also submitted that even after passing away of the defendant no.1, the accommodation at Vighneshwar society was not adequate to support the family of the defendant no.1. The lower appellate court, therefore, ought to have confirmed the decree passed by the trial court.

I am unable to agree with Mrs. Mehta. The plaintiff had instituted suit for recovery of possession on the grounds, *inter alia,* that the defendant no.1 had acquired

suitable alternative accommodation. If pending the Appeal, there were any change in the requirement of the family of the defendant no.1, either by change in the number of family members or by acquisition of further property, it was a development pending the Appeal which required to be considered by the lower appellate court. As, the matter required further evidence, the right course for the lower appellate court was to remand the matter so as to enable the parties to lead evidence. I am, therefore, of the opinion that the lower appellate court was perfectly justified in remanding the matter on limited issues recorded hereinabove.

No case for interference is made out. The Revision Application is dismissed with cost. **Rule** is *discharged*. *Interim* relief stands vacated.

{Miss R.M Doshit, J.}

*Prakash**